

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

AGUSTIN CALDERON	§	
VS.	§	CIVIL ACTION NO. 9:20-CV-142
DEBORAH PHILLIPS, <i>et al.</i> ,	§	

MEMORANDUM OPINION AND ORDER OVERRULING OBJECTIONS  
AND ADOPTING REPORT AND RECOMMENDATION

Plaintiff, Agustin Calderon, an inmate confined at the Eastham Unit with the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against Defendants Deborah Phillips, Karen L. Little, Bruce A. Johnson, and Kenneth E. Hutto.

The Court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends denying Plaintiff's request for preliminary injunctive relief and dismissing this civil rights action filed pursuant to 42 U.S.C. § 1983 for failure to state a claim and as frivolous (doc. # 48).

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the records, and pleadings. Plaintiff filed objections to the Report and Recommendation of United States Magistrate Judge (doc. # 51). This requires a *de novo* review of the objections in relation to the pleadings and applicable law. *See* FED. R. CIV. P. 72(b).


After a careful review, the Court finds Plaintiff merely re-urges the same arguments. Plaintiff now concedes, however, that he has not even attempted to contest the disciplinary conviction at issue. Objections, pg. 2. As such, Plaintiff cannot show an actual injury necessary to establish a claim for denial of access to courts for failure to process his grievances contesting his disciplinary conviction. As outlined by the Magistrate Judge, Plaintiff cannot show an actual injury until he files

a § 2254 petition contesting the disciplinary conviction at issue. It is only then, if a court denies the § 2254 petition for failure to exhaust administrative remedies, that Plaintiff can show the requisite injury. Plaintiff's remaining claims also lack merit for the reasons outlined in the Report and Recommendation.

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **ADOPTED**. A Final Judgment will be entered in accordance with the recommendations of the Magistrate Judge.

**SIGNED** this the 28 day of **June, 2022**.

  
Thad Heartfield  
United States District Judge